

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

REGINALD JOHNSON,	:	
Plaintiff,	:	
v.	:	Civil Action No. 05-468J
JEFFREY A. BEARD, SECRETARY,	:	
PENNSYLVANIA DEPARTMENT OF	:	
CORRECTIONS, SUPERINTENDENT	:	
ROZUM, S.C.I. SOMERSET, and	:	
DEPARTMENT OF CORRECTIONS	:	
Defendants	:	

MEMORANDUM ORDER

This matter was referred to Magistrate Judge Keith A. Pesto for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and subsections 3 and 4 of Local Rule 72.1 for Magistrate Judges.

On April 21, 2006, the Magistrate Judge filed a Report and Recommendation, docket no. 2, recommending pursuant to 28 U.S.C. § 1915A, that the complaint be dismissed in part for failure to state a claim, 28 U.S.C. § 1915(e)(2)(B), and that the balance of the complaint, in which plaintiff claims that he is being exposed to second-hand tobacco smoke, be dismissed without prejudice to pursuing that claim in the matter in which the claim has already been made, Johnson v. Beard, C.A. No. 04-226J.

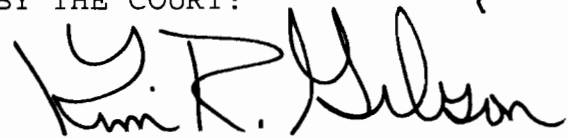
The plaintiff was notified that pursuant to 28 U.S.C. § 636(b)(1), he had ten days to serve and file written objections to the Report and Recommendation. Plaintiff has not filed objections, and the time to do so has expired.

Upon review of the record and the Report and Recommendation, and noting the lack of objections thereto, the following order is entered:

AND NOW, this 22<sup>nd</sup> day of May, 2006, it is

ORDERED that the complaint is dismissed for failure to state a claim, 28 U.S.C. § 1915(e)(2)(B), with the exception of the claims that plaintiff is being exposed to second-hand tobacco smoke. That claim is dismissed without prejudice to pursuing that claim in the complaint pending at Johnson v. Beard, C.A. No. 04-226J. The Report and Recommendation is adopted as the opinion of the Court. The Clerk shall mark this matter closed.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Kim R. Gibson', written over a horizontal line.

KIM R. GIBSON,  
UNITED STATES DISTRICT JUDGE

Notice to:

Reginald Johnson EV-8591  
S.C.I. Somerset  
1600 Walters Mill Road  
Somerset, PA 15510